

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

JONATHAN ADAMS, AS
ADMINISTRATOR OF THE
ESTATE OF GARY C. ADAMS,

Plaintiff,

vs.

CIVIL ACTION NO: 3:10-CV-00605

MARATHON PETROLEUM CO., LLC.,
MARATHON OIL COMPANY,
JOHN DOE AND JOHN DOE
CORPORATION, an unknown
individual and corporation,

Defendants.

* * * * *

The deposition of DONALD LEE BENDER was taken on
the 14th day of October, 2010, commencing at 2:40 p.m., at
the Law Offices of Nelson Mullins, 949 Third Avenue, Suite
200, Huntington, West Virginia, before Alex Koutsunis, a
Court Reporter and Notary Public in and for the State of
West Virginia, pursuant to notice in the above-styled
matter which is now pending and undetermined in said Court.

ALEX KOUTSUNIS
AAA COURT REPORTING SERVICE
401 11th Street, Suite 504 -- P. O. Box 2043
Huntington, WV 25701 -- (304) 523-4300

Donald Bender

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1 wheelhouse and went down where?

2 A I went directly to my room and put clothes
3 on.

4 Q After that, where did you go?

5 A After I got clothes on, I ran directly to
6 the stern of the boat.

7 Q And when you got there, what was going on?

8 A When I got to the stern of the boat, I
9 assessed the situation, which was the guys were holding
10 the handy line that connects itself to the life ring.
11 Gary was already underneath the boat. There was a
12 couple of guys on the handy line trying to pull the life
13 ring back upriver. They could not budge it. I grabbed
14 the fire ax and was going to chop the line, cut the line
15 off from the stern of the boat. When I got turned
16 around and looked and assessed the situation further, I
17 gave the fire ax to one of the deck crew to chop it off
18 of the barge, because if I had chopped the line off at
19 the boat, it would have put the crew in danger.

20 Q Because it would have backlashed and --

21 A Yes, sir.

22 Q -- and potentially hit somebody?

23 A Yes, sir. It would have backlashed

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1 directly into their path. So as I was the only one on
2 the stern of the boat, I got out of the way and they
3 chopped it off from the barge itself.

4 Q Who had hold of the line when you got down
5 there, do you remember?

6 A No, sir. I don't remember who all had hold
7 of the line. I know pretty much the whole deck crew was
8 there. I don't remember who I handed the fire ax to. I
9 just remember they were all over there pulling and
10 tugging and trying to get Gary back out from underneath
11 the boat.

12 Q So after you cut the line, what happened
13 next?

14 A We cut the line and the boat started to
15 drift downriver, and as we started to drift, the life
16 ring popped up empty. I then went around the side of
17 the boat to see if I could see him anywhere in the
18 river.

19 Q Which side of the boat did you go to? The
20 starboard side?

21 A It would have been the starboard side. It
22 was the outriver -- outboard side. And I think I just
23 peered around the corner to look and then ran to the

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1 of friends.

2 Q At any time prior to you going off watch,
3 did you have a discussion with anybody about the mooring
4 configuration when you went off watch?

5 A Not to my recollection.

6 MR. BISER: That's all I have.

7 EXAMINATION

8 BY MR. ELLIS:

9 Q Captain, since the time you have been a
10 deckhand and perhaps before, was there a standard
11 operating procedure for releasing the stern of a vessel
12 that was moored bow upstream?

13 A When we turn a vessel loose, when you turn
14 anything loose, barge, vessel, you start at the
15 downriver-most end, which for the configuration that we
16 were that night, would have been the stern end of the
17 Tri-State. You go all the way down to the lowest point
18 downriver and start there and turn loose moving your way
19 back upriver.

20 Q Why do you start at the stern-most fitting
21 even if you're not sure there's a line on it?

22 A Because that gives you the piece of mind
23 that there is nothing there holding you in. If you

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1 start at the lowest end that you can put something, then
2 you know that there's nothing there.

3 Q Has that been the standard procedure since
4 you were a deckhand?

5 A That has been the standard procedure since
6 I was a deckhand, and that's the way I was taught to do
7 it from guys that started back -- longer than I have
8 been alive.

9 Q That night, can you describe for me the
10 river condition?

11 A The water was up. There was some drift
12 running and the current was somewhere between three and
13 four miles an hour, I think, is what the official report
14 was saying. I know it was swift. A loaded fleet is a
15 pretty swift place over there with the river and
16 everything.

17 Q Is three to four miles an hour a strong
18 current for the Ohio?

19 A Yep. Yes, it's getting pretty swift then.
20 It's something not to be taken lightly and definitely
21 pay attention to what you're doing.

22 Q When you were talking about drift, what is
23 drift?

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